

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 22, 2023

TO: All interested persons.

RE: Epitome Development LLC
TPDES Permit No. WQ0016226001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Taylor Public Library, 801 Vance Street, Taylor, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name,

address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Epitome Development LLC
TPDES Permit No. WQ0016226001**

The Executive Director has made the Response to Public Comment (RTC) for the application by Epitome Development LLC for TPDES Permit No. WQ0016226001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016226001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Taylor Public Library, 801 Vance Street, Taylor, Texas.

MAILING LIST
for
Epitome Development LLC
TPDES Permit No. WQ0016226001

FOR THE APPLICANT:

Dharma Rajah, President
Epitome Development LLC
3040 Post Oak Boulevard #1800-156
Houston, Texas 77056

Jonathan Nguyen, Permit Specialist
Quiddity Engineering
3100 Alvin Devane Boulevard, Suite 150
Austin, Texas 78741

Eric Vann, Project Manager
Quiddity Engineering
3100 Alvin Devane Boulevard, Suite 150
Austin, Texas 78741

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Aubrey Pawelka, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Sonia Bhuiya, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087



COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

Protegiendo a Texas reduciendo y previniendo la contaminación

Marzo 22, 2023

TO: Todas las personas interesadas.

RE: Epitome Development LLC
TPDES Permiso No. WQ0016226001

Decisión del Director Ejecutivo.

El director ejecutivo ha tomado la decisión de que la solicitud de permiso mencionada anteriormente cumple con los requisitos de la ley aplicable. **Esta decisión no autoriza la construcción u operación de ninguna instalación propuesta.** Esta decisión será considerada por los comisionados en una reunión pública programada regularmente antes de que se tome cualquier medida sobre esta solicitud, a menos que todas las solicitudes de audiencia o reconsideración de casos impugnados hayan sido retiradas antes de esa reunión.

Se adjuntan a esta carta las instrucciones para ver en Internet la Respuesta del Director Ejecutivo a los Comentarios Públicos (RTC). Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov. Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios públicos, están disponibles para su revisión en la Oficina Central de TCEQ. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en la Biblioteca Pública de Taylor, 801 Vance Street, Taylor, Texas.

Si no está de acuerdo con la decisión del director ejecutivo y cree que es una "persona afectada" como se define a continuación, puede solicitar una audiencia de caso impugnado. Además, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Los procedimientos para la evaluación de la comisión de las solicitudes de audiencia/solicitudes de reconsideración se encuentran en 30 Código Administrativo de Texas, Capítulo 55, Subcapítulo F. A continuación, se presenta una breve descripción de los procedimientos para estas dos solicitudes.

Cómo solicitar una audiencia de caso impugnado.

Es importante que su solicitud incluya toda la información que respalde su derecho a una audiencia de caso impugnado. Su solicitud de audiencia debe demostrar que cumple con los requisitos legales aplicables para que se le conceda su solicitud de audiencia. La consideración de la comisión de su solicitud se basará en la información que usted proporcione.

La solicitud debe incluir lo siguiente:

- (1) Su nombre, dirección, número de teléfono durante el día y, si es posible, un número de fax.
- (2) El nombre del solicitante, el número de permiso y otros números enumerados anteriormente para que su solicitud pueda procesarse adecuadamente.
- (3) Una declaración que exprese claramente que está solicitando una audiencia de caso impugnado. Por ejemplo, la siguiente declaración sería suficiente: "Solicito una audiencia de caso impugnado".
- (4) Si la solicitud es realizada por un grupo o asociación, la solicitud debe identificar:
 - (A) una persona por nombre, dirección, número de teléfono durante el día y, si es posible, el número de fax, de la persona que será responsable de recibir todas las comunicaciones y documentos para el grupo.;
 - (B) los comentarios sobre la solicitud presentada por el grupo que constituyen la base de la solicitud de audiencia; y
 - (C) por nombre y dirección física, uno o más miembros del grupo que de otro modo tendrían derecho a solicitar una audiencia por derecho propio. Los intereses que el grupo busca proteger deben estar relacionados con el propósito de la organización. Ni la reclamación alegada ni la reparación solicitada deben requerir la participación de los miembros individuales en el caso.

Además, su solicitud debe demostrar que usted es una **"persona afectada"**. Una persona afectada es aquella que tiene un interés justiciable personal relacionado con un derecho, deber, privilegio, poder o interés económico legal afectado por la solicitud. Su solicitud debe describir cómo y por qué se vería afectado negativamente por la instalación o actividad propuesta de una manera que no sea común al público en general. Por ejemplo, en la medida en que su solicitud se base en estas preocupaciones, debe describir el impacto probable en su salud, seguridad o usos de su propiedad que puedan verse afectados negativamente por la instalación o las actividades propuestas. Para demostrar que tiene un interés personal justiciable, debe indicar, tan específicamente como pueda, su ubicación y la distancia entre su ubicación y la instalación o actividades propuestas.

Su solicitud debe plantear cuestiones de hecho controvertidas que sean relevantes y materiales para la decisión de la comisión sobre esta solicitud que fueron planteadas **por usted** durante el período de comentarios públicos. La solicitud no puede basarse únicamente en cuestiones planteadas en los comentarios que haya retirado.

Para facilitar la determinación por parte de la comisión del número y alcance de los asuntos que se remitirán a la audiencia, usted debe: 1) especificar cualquiera de las respuestas del director ejecutivo a **sus** comentarios que usted disputa; 2) la base fáctica de la disputa; y 3) enumerar cualquier cuestión de derecho en disputa.

Cómo solicitar la reconsideración de la decisión del Director Ejecutivo.

A diferencia de una solicitud de audiencia de caso impugnado, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Una solicitud de reconsideración debe contener su nombre, dirección, número de teléfono durante el día y, si es posible, su número de fax. La solicitud debe indicar que está solicitando la reconsideración de la decisión del director ejecutivo, y debe explicar por qué cree que la decisión debe ser reconsiderada.

Fecha límite para la presentación de solicitudes.

La oficina del Secretario Oficial debe **recibir** una solicitud de audiencia de caso impugnado o reconsideración de la decisión del director ejecutivo a más tardar **30 días calendario** después de la fecha de esta carta. Puede enviar su solicitud electrónicamente a www.tceq.texas.gov/agency/decisions/cc/comments.html o por correo a la siguiente dirección:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087


Procesamiento de solicitudes.

Las solicitudes oportunas para una audiencia de caso impugnado o para la reconsideración de la decisión del director ejecutivo se remitirán al Programa de Resolución Alternativa de Disputas de TCEQ y se incluirán en la agenda de una de las reuniones programadas regularmente de la comisión. Las instrucciones adicionales que explican estos procedimientos se enviarán a la lista de correo adjunta cuando se haya programado esta reunión.

Cómo obtener información adicional.

Si tiene alguna pregunta o necesita información adicional sobre los procedimientos descritos en esta carta, llame al Programa de Educación Pública, al número gratuito, 1-800-687-4040.

Atentamente,



Laurie Gharis
Secretaria Oficial

LG/erg

Recinto

**RESPUESTA DEL DIRECTOR EJECUTIVO A LOS COMENTARIOS DEL
PÚBLICO**

**para
Epitome Development LLC
TPDES Permiso No. WQ0016226001**

El Director Ejecutivo ha puesto a disposición de Internet la respuesta al comentario público (RTC) para la solicitud de Epitome Development LLC del permiso de TPDES No. WQ0016226001. Puede ver e imprimir el documento visitando la Base de Datos Integrada de los Comisionados de TCEQ en el siguiente enlace:

<https://www.tceq.texas.gov/goto/cid>

Para ver el RTC en el enlace anterior, ingrese el número de identificación TCEQ para esta solicitud (WQ0016226001) y haga clic en el botón "Buscar". Los resultados de la búsqueda mostrarán un enlace al RTC.

Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov.

Información adicional

Para obtener más información sobre el proceso de participación pública, puede comunicarse con la Oficina del Asesor de Interés Público al (512) 239-6363 o llamar al Programa de Educación Pública, al número gratuito, (800) 687-4040.

Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios, están disponibles para su revisión en la Oficina Central de TCEQ en Austin, Texas. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en la Biblioteca Pública de Taylor, 801 Vance Street, Taylor, Texas.

LISTA DE CORREO
para
Epitome Development LLC
TPDES Permiso No. WQ0016226001

PARA EL SOLICITANTE:

Dharma Rajah, President
Epitome Development LLC
3040 Post Oak Boulevard #1800-156
Houston, Texas 77056

Jonathan Nguyen, Permit Specialist
Quiddity Engineering
3100 Alvin Devane Boulevard, Suite 150
Austin, Texas 78741

Eric Vann, Project Manager
Quiddity Engineering
3100 Alvin Devane Boulevard, Suite 150
Austin, Texas 78741

PERSONAS INTERESADAS:

Ver lista adjunta.

PARA EL DIRECTOR EJECUTIVO
por correo electrónico:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Aubrey Pawelka, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Sonia Bhuiya, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

PARA ABOGADOS DE INTERÉS
PÚBLICO

por correo electrónico:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

PARA EL SECRETARIO OFICIAL
por correo electrónico:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

BURROUGH , PAUL
464 FOX RD
WEATHERFORD TX 76088-8378

DAFFIN , PATRICIA ANN
2950 FM 3349
TAYLOR TX 76574-5298

VASSAR , NATHAN E
LLOYD GOSSELINK ROCHELLE & TOWNSEND PC
STE 1900
816 CONGRESS AVE
AUSTIN TX 78701-2442

WILKERSON , YVETTE
LLOYD GOSSELINK
STE 1900
816 CONGRESS AVE
AUSTIN TX 78701-2442

TPDES PERMIT NO. WQ0016226001

**APPLICATION BY
EPITOME DEVELOPMENT LLC
FOR TPDES PERMIT
NO. WQ0016226001**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the Epitome Development LLC application for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016226001 and the ED's preliminary decision on the application. As required by 30 Texas Administrative Code (TAC) Section 55.156, before this permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely comments from Patricia Daffin, and Mr. Nathan E. Vassar on behalf of 05 Ranch Investments, LLC, Prairie Crossing Municipal Utility Districts 1 and 2 (Prairie Crossing MUDS), and Prairie Crossing Wastewater, LLC (Prairie Crossing). The TCEQ has not received any other timely comments on this permit application.

This response addresses all timely filed public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at <http://www.tceq.texas.gov>.

I. Background

A. Description of Facility

Epitome Development LLC applied for new Texas Pollutant Discharge Elimination System Permit No. WQ0016226001 to authorize the discharge of treated domestic wastewater at an Interim volume not to exceed a daily average flow of 0.10 MGD and a Final volume not to exceed a daily average flow of 0.30 MGD.

The Taylor Tract Wastewater Treatment Facility is an activated sludge process plant operated in the single stage nitrification mode. Treatment units in the Interim

and the Final phases will include a mechanical bar screen, an aeration basin, a final clarifier, cloth-media disk filters, a multi-stage aerobic digester, and a chlorine contact chamber. The facility has not been constructed.

The effluent limitations in both phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3.0 mg/l ammonia-nitrogen (NH₃-N), 126 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The plant site will be located 0.72 miles southeast of the intersection of Farm-to-Market Road 973 and Rio Grande Street, in Williamson County, Texas 76574.

Outfall Location:

Outfall Number	Latitude	Longitude
001	30.523506 N	97.442402 W

The treated effluent will be discharged via Outfall 001 to an unnamed tributary, thence to an unnamed impoundment, thence to an unnamed tributary, thence to Battleground Creek, thence to Soil Conservation Service Site 31 Reservoir, thence to Battleground Creek, thence to Brushy Creek in Segment 1244 of the Brazos River Basin. The unclassified receiving water use are limited aquatic life use for the unnamed tributary, unnamed impoundment, and Battleground Creek. The designated uses for Segment No. 1244 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use.

In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2

degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

B. Procedural Background

The TCEQ received Epitome Development LLC's application on September 27, 2022, and declared it administratively complete on October 4, 2022. The English Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on October 6, 2022, in *Austin American-Statesman*. The Spanish NORI was published on October 6, 2022, in *El Mundo Newspaper*. The English Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit were published on December 20, 2022, in *Austin American-Statesman*. The Spanish NAPD was published on December 22, 2022, in *El Mundo Newspaper*. The application was technically complete on November 14, 2022. The comment period for this application closed on January 23, 2023.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

C. Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: <https://www.sos.state.tx.us>;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): <https://www.sos.state.tx.us/tac/> (select "View the current Texas Administrative Code" on the right, then "Title 30 Environmental Quality");
- for Texas statutes: <https://statutes.capitol.texas.gov/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select "Rules" then "Download TCEQ Rules");

- for Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov; and
- for Federal environmental laws: <https://www.epa.gov/laws-regulations>.

Commission records on the Application and draft permit are available for viewing and copying and are located at the Taylor Public Library, 801 Vance Street, Taylor, Texas and 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk), for the current application until final action is taken.

II. COMMENTS AND RESPONSES

COMMENT 1:

Patricia Daffin commented that she was never notified that a large construction pond would be constructed directly across FM 973 west of her property. She asks how many gallons will be released into the creek at any given time.

RESPONSE 1:

There are two public notices regarding this permit action, the Notice of Receipt of Application and Intent to Obtain a Wastewater Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). The TCEQ's notice rules require applicants to provide public notices for wastewater permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located ... if the facility is located or proposed to be located in a municipality, the applicant [must] publish notice in any newspaper of general circulation in the municipality."¹ After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge."²

Additionally, the TCEQ's notice rules for a new permit or major amendment require mailed notice of the NORI and NAPD to landowners named on the application

¹ 30 TEX. ADMIN. CODE § 39.405(f)(1). *See generally* 30 Tex. Admin. Code §§ 39.405, 39.418, 39.419, and 39.551

² 30 TEX. ADMIN. CODE § 39.551(c)(1).

map and persons on the mailing list maintained by the Office of the Chief Clerk.³ The applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant's property and the property boundaries of all landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point. The landowner map provided by Epitome Development did not indicate Ms. Daffin as being an adjacent landowner. Therefore, they were not included on the mailing list for the NORI. Any persons who submit a comment or contested case hearing request prior to the end of the public comment period are added to the mailing list for that permit action.

In accordance with TCEQ's notice rules, two public notices were published for the submitted application. Epitome Development published the NORI on October 6, 2022, in the *Austin American Statesman*, and the NAPD on December 22, 2022, in the *El Mundo Newspaper*.

Regarding Ms. Daffin's question about the discharge, Epitome Development LLC applied for new Texas Pollutant Discharge Elimination System Permit No. WQ0016226001 to authorize the discharge of treated domestic wastewater at an Interim volume not to exceed a daily average flow of 0.10 million gallons per day (MGD) and a Final volume not to exceed a daily average flow of 0.30 MGD.

COMMENT 2:

Patricia Daffin expresses concern about overflow from the proposed facility.

RESPONSE 2:

The proposed permit prohibits the unauthorized discharge of wastewater or any other waste and includes appropriate requirements. For example, a permittee must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.⁴ In addition, the plans and specifications for domestic sewage collection and treatment works

³ See 30 Tex. Admin. Code §§ 39.413, 39.418, 39.419, and 39.551.

⁴ 30 TEX. ADMIN. CODE § 217.36.

associated with any domestic permit must be approved by TCEQ.⁵ All of these permit provisions are designed to help prevent unauthorized discharges of raw sewage. Except as allowed by 30 TAC § 305.132, will be required to report an unauthorized discharge to the TCEQ within 24 hours.⁶ Finally, will be subject to potential enforcement action for failure to comply with TCEQ rules or the permit.

COMMENT 3:

Patricia Daffin points out that landowners rely on the unnamed tributary to water their livestock and fish in the lakes and ponds.

RESPONSE 3:

The Texas Surface Water Quality Standards (TSWQS) in 30 TAC Chapter 307 require that discharges may not degrade the receiving waters and may not result in situations that impair existing, attainable, or designated uses, and that surface waters not be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals. The effluent limits in the draft permit are set to maintain and protect the existing instream uses. The draft permit was developed in accordance with the TSWQS to be protective of water quality in the receiving waters including waters located downstream of the permitted outfall, provided that Epitome Development operates and maintains the proposed facility according to TCEQ rules and the proposed permit's requirements. To ensure compliance with the TSWQS (30 TAC Chapter 307), the Executive Director follows the methodology outlined in the Procedures to Implement the Texas Surface Water Quality Standards (IPs; June 2010).

COMMENT 4:

05 Investments, Prairie Crossing Wastewater, LLC (Prairie Crossing), and Prairie Crossing Municipal Utility Districts 1 & 2 (Prairie Crossing MUDs) state that the application fails to comply with the State's regionalization policy. Specifically, that there are existing permitted domestic WWTP or collection systems within a three-mile radius of the proposed facility which the Applicant should identify and provide correspondence regarding receiving wastewater service.

⁵ Epitome Development LLC Draft Permit, Other Requirements, Item 6, page 34; *see also* 30 TEX. ADMIN. CODE § 217.6(d).

⁶ APPLICANT Draft Permit, Monitoring and Reporting Requirements, Item 7, page 5.

RESPONSE 4:

Texas Water Code § 26.081 enumerates the State’s Regionalization policy. Section 26.081 states that the policy “encourage[s] and promote[s] the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” In furtherance of that policy the Texas Water Code § 26.0282 authorizes the TCEQ, when considering the issuance of a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems. To that end, when an Applicant applies for a new permit or applies for a major amendment to an existing permit to increase flow, the TCEQ Domestic Wastewater Permit Application, specifically the “Domestic Technical Report 1.0,” requires Applicants to provide detailed information regarding regional wastewater treatment facilities or collection systems. First, the Report requires Applicants to provide information about any domestic permitted wastewater treatment facilities and/or collection systems located within a three-mile radius of the proposed facility. Second, whether those facilities currently have the capacity or are willing to expand to accept the volume of wastewater proposed by Applicants. Lastly, the Report requires an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within 3 miles versus the cost of the proposed facility or expansion.

Applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed plant regarding connection to their system. According to information provided by the Applicant, they have contacted all facilities within a three-mile radius. Epitome Development LLC provided information indicating that they contacted the City of Taylor WWTP and Prairie Crossing Wastewater, LLC. TCEQ records do not indicate that Epitome has received a response from the City of Taylor. Epitome has been in discussion with Prairie Crossing and is willing to tie into Prairie Crossing MUD if their development schedules line up and the cost to connect is more beneficial to building a new plant.

COMMENT 5:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that the application fails to sufficiently demonstrate need for the final phase.

RESPONSE 5:

The applicant provided sufficient justification for the Final phase of the permit application which was provided in Domestic Technical Report 1.1.

There will be 795 residential connect, 350 apartments units, and 20 commercial connection. For design purpose, the wastewater flow for residential, apartment commercial connections is 250 gallon per day (gpd/conn), 175 gpd/conn and 2000 gpd/conn, respectively.

COMMENT 6:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that the proposed discharge is not in compliance with TCEQ's antidegradation policy.

Response 6:

The discharge route for the above referenced permit is via Outfall 001 to an unnamed tributary, thence to an unnamed impoundment, thence to an unnamed tributary, thence to Battleground Creek, thence to Soil Conservation Service Site 31 Reservoir, thence to Battleground Creek, thence to Brushy Creek in Segment 1244 of the Brazos River Basin. Streams and impoundments were assessed for the first 3 miles after the discharge point, as standard practice. The unnamed tributary is intermittent with perennial pools per USGS topo map and aerial images. Seen on aerial images a review of available aerial imagery reveals that the unnamed tributary includes small ponds, stock ponds, and perennial pools. Battleground Creek is also intermittent with perennial pools per USGS topo map and aerial images. Per 307.4(h)(4) of the Texas Surface Water Quality Standards, a limited aquatic life use (ALU) with a 3.0 mg/L dissolved oxygen criterion is presumed for streams that are intermittent with perennial pools.

A limited ALU falls under a Tier I antidegradation review. The unnamed impoundment is ~6 acres in size and therefore given a limited aquatic life use (ALU) consistent with 307.4(h)(4). 307.5 (c)(2)(A) of the TSWQS states that a Tier I

antidegradation review must ensure that all pollution that could cause an impairment of existing uses is included in the evaluation. Screening procedures for wastewater permits can be found in TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (IPs). The IPs indicate that a nutrient screen be performed when effluent flow is greater than or equal to 0.25 MGD. This facility has a proposed final phase of 0.3 MGD, so a screening was performed. The screening results did not indicate a high concern for nutrient enrichment in the receiving waters. Using a weight-of-evidence approach with consideration of the relatively low final phase flow, relatively turbid receiving waters over clay substrate, it was determined that a nutrient limit or monitoring were not warranted in this case.

The Executive Director's Tier I antidegradation review ensures that existing water quality uses are not impaired by increases in pollution loading. Numerical and narrative criteria necessary to protect existing uses will be maintained. The draft permit was developed in accordance with the TSWQS to be protective of water quality, provided that the facility is operated and maintained according to TCEQ rules and permit requirements. The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards* (IPs) is designed to ensure compliance with the *Texas Surface Water Quality Standards* (TSWQS) (30 TAC Chapter 307).

COMMENT 7:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs commented that the application was deficient because in Domestic Report 1.0, in response to sections 8 and 9, Epitome merely states that an operator "will be selected prior to construction." They claim that Epitome has not demonstrated that TCEQ-compliant disposal of biosolids can be achieved or that the proposed WWTP will not become a public nuisance

RESPONSE 7:

A permittee may operate the facility itself or contract with an individual operator, company, and other entity to operate the facility. Other Requirement No. 1 in the permit requires that this Category C facility be operated by a chief operator or an operator holding a Category C license or higher. In addition, the draft permit contains requirements on how to handle the sludge or biosolids which includes the

authorization for the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge. These requirements can be found on pages 17-33 of the draft permit.

COMMENT 8:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that the information provided by the Applicant in Section 3 of Domestic Administrative Report 1.1 does not show how the buffer zone requirements have been met.

RESPONSE 8:

The buffer zone requirements, found in 30 TAC § 309.13(c), state that a WWTP may not be closer than 500 feet from a public water well as provided by 30 TAC § 290.41(c)(1)(B) (relating to water sources) nor 250 feet from a private water well. Additionally, the rule lists several separation distances that apply to the facility.

The draft permit states that prior to construction of the Interim and Final phases, the permittee shall submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC § 309.13(e)(3). The evidence of legal restrictions shall be submitted to the Executive Director in care of the TCEQ Wastewater Permitting Section (MC 148). The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d). (See Attachment A and B)

The Applicant provided the following information in Domestic Technical Report 1.0 Section 6 regarding their actions taken to meet the conditions of the buffer zone: buffer zones requirements for the interim phase will be met by ownership, buffer zone requirements for the final phase will be met by restrictive easements. Additionally, the Applicant stated that the buffer zone area that extends beyond the plant boundary will be into a detention pond. The Applicant provided to TCEQ buffer zone drawings demonstrating how Epitome Development will comply with the buffer zone requirements, see Attachment A and Attachment B of the draft permit.

COMMENT 9:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that a noise and odor abatement plan has not been prepared.

RESPONSE 9:

An applicant can comply with the odor control rule by 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by Epitome; or 3) providing nuisance odor control.

According to its application, Epitome intends to comply with the requirement by submitting sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC § 309.13(e)(3). The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d). (See Other Requirement 3 on the draft permit)

In addition, the proposed wastewater treatment will be an aerobic biological process. Aerobic biological processes use oxygen from the air to reduce the organic content of the wastewater through biological action. Oxygen turns sulfide compounds (the most common odor-causing compounds) into odorless sulfates. Wastewater without DO can also produce offensive odors. The draft permit requires that the effluent contain a minimum of 4.0 mg/l of DO.

If anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to TCEQ by calling toll-free 1-888-777-3186, or the TCEQ Region 11. Office.

Citizen complaints may also be filed on-line at

<http://www2.tceq.texas.gov/oce/complaints/index.cfm>.

Moreover, the permit does not limit the ability of an individual to seek legal remedies against regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property. There is no requirement to submit a noise abatement plan.

COMMENT 10:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that the application is incomplete regarding the description of the immediate receiving waters because Section 4 of Domestic Technical Report Worksheet 2.0 requires the applicant

to identify the appropriate description of the receiving waters. They claim that Epitome does not identify an existing pond downstream of the proposed outfall.

RESPONSE 10:

The applicant correctly identified the immediate receiving water as an unnamed tributary and noted in Section 4.D. of Domestic Technical Report Worksheet 2.0 that there is a man-made dam approximately 0.3 miles downstream of the proposed outfall. TCEQ technical staff also independently verified the immediate receiving waters and the discharge route downstream to the first classified segment, Brush Creek (Segment 1244) using the USGS topographic map provided in the application, aerial imagery, and other geographic information system tools and mapping resources. The “pond” referred to in the comment is likely the unnamed impoundment, located approximately 0.2 mile downstream of the proposed outfall, which was noted by technical staff during the review and included in the discharge route description.

COMMENT 11:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that the application is incomplete regarding the Description of Stream Physical Characteristics (Domestic Worksheet 2.1), which they state is entirely missing from the application.

RESPONSE 11:

Domestic Worksheet 2.1 of the application is only required for discharges to perennial streams and intermittent streams with perennial pools. It is not required for discharges to intermittent streams or impoundments. This discharge initially goes to an intermittent stream, then to an impoundment. Therefore, for this particular discharge scenario, Domestic Worksheet 2.1 is not required.

COMMENT 12:

05 Investments, Prairie Crossing, and Prairie Crossing MUDs comment that in Epitome’s Attachment B to the permit application, the discharge creek path is not in compliance with TCEQ requirements as the discharge creek path is required to be highlighted in yellow.

RESPONSE 12:

The ED appreciates this comment and notes that the Applicant provided an updated map with the highlighted discharge route to the Commission.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the proposed permit were made in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor
Interim Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



Aubrey Pawelka
Environmental Law Division
State Bar No. 24121770
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239- 0622
Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON